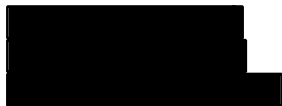




FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

KIN/145053

PRELIMINARY RECITALS

Pursuant to a petition filed November 06, 2012, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on January 08, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied Kinship Care (KC) benefits to the Petitioner for MH.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Marissa Weaver, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the paternal grandmother of 5 year old MH. The Petitioner has cared for MH since his birth.
3. On September 19, 2012, the Petitioner applied for KC benefits for MH.

4. On September 30, 2012, the agency assessor conducted a home visit.
5. On October 5, 2012, the assessor conducted a phone interview with MH's father. MH's father lives in Texas with a girlfriend and their 7 month old child. He visits MH in Milwaukee 3 – 4 times/year. He was employed in the US Army but recently discharged due to mental health issues. He has AODA issues. He does not have a CPS history. He sends money to MH's mother each month. He stated that he is able to take care of MH.
6. On October 10, 2012, the assessor conducted a phone interview with MH's mother. She lives with her sister. She is employed part-time at Target. She receives \$150/month from MH's father. She has no AODA issues, mental health issues or CPS history. She has no other children. She sees MH approximately once/week.
7. On October 20, 2012, the agency issued a Notice of Non-Approval of KC Payment to the Petitioner, finding that MH is not a child who meets the criteria as a child in need of protection or services and not likely to meet the criteria in the future.
8. On November 6, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLR) Aid to Families with Dependent Children (AFDC) payment (see, Wis. Stat. § 49.19). To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). See also, Wis. Admin. Code ch. DCF 58.

The eligibility/review criteria for a relative who is a guardian under §48.977 versus a relative who is not a §48.977 guardian are different. Though the Petitioner filed for guardianship of MH in October, 2012, she testified that she did not continue to pursue it and she does not, at this time, have guardianship of MH.

For Kinship Care cases in which the relative is not a §48.977 guardian, all of the conditions listed in §48.57(3m)(am) must be met. The pertinent “conditions specified in par. (am)” here are as follows:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interest of the child.
2. The county department or department determines that the child meets one or more of the criteria specified in s.48.13 or 938.13 or that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home.

Id., (3m)(am)1,2.

The agency testified that the Petitioner's residence is suitable for MH. The Petitioner takes good care of him and has created a safe and stable environment for him. Accordingly, the placement satisfies the “need for the child's placement” criterion described at Wis. Stats. §48.57(3m)(am)1. However, the agency's basis for denial was that the child does not meet one of the criteria at Wis. Stat. §48.13 and therefore does not meet the condition in §48.57(3m)(am)2.

The criteria which must be met in § 48.13 to be a child in need of protection or services include:

§ 48.13. Jurisdiction over children alleged to be in need of protection or services. . . .

(2) Who has been abandoned; . . .

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home; . . .

Wis. Stats. §48.13.

The Petitioner argues that MH's father and mother have both refused to provide care to MH. She also testified that MH's mother is young and has stated that she is not prepared to care for MH. Petitioner believes that MH's mother is unable to care for MH. She testified that MH's father has AODA issues and mental health issues that compromise his ability to care for MH. She further testified that MH has gone to stay with his mother on a weekly basis but he cries when he has to go and states that he is treated badly when he goes there. The Petitioner noted that MH's father has primary placement of him per a court order. She also testified that there is a history of police contact with MH's mother and father though there were no details provided with regard to these contacts.

Though this might be a close case, there is little concrete evidence produced at this time for me to conclude that this situation meets the criteria in § 48.13. The Petitioner testified with regard to MH's father's mental health issues but, without additional evidence, this is hearsay. His father currently cares for a 7 month old child and there is no evidence that this child is not being properly cared for or is at risk of improper care. Individuals with mental health issues can care for their children and without more evidence, I cannot conclude that the father's mental health issues prevent him from caring for MH. In addition, the Petitioner argues that MH's father has refused to care for MH. However, I do not have evidence of a refusal to care for him. MH's father told the assessor that he could care for his son .

Similarly, I do not have sufficient evidence to conclude that MH's mother has refused or is unable to care for him. Though the Petitioner argues that she is young, I note that she is 22 years old and employed. She receives support from MH's father. Though she does not have her own residence, it appears that she has a stable residence with her sister. She visits MH on a regular basis. There is nothing to indicate that she refuses to care for MH and that she is unable to care for him.

I say that this could be a close case because, if the Petitioner were able to produce more detailed evidence and documentation of the father's mental illness and how it could affect his care of MH or more detailed evidence and documentation of police contacts related to MH's mother and father and how those might affect their care of MH, there might be sufficient evidence to demonstrate that this situation meets the criteria in § 48.13. At this time, however, I do not have anything more than hearsay evidence from the

Petitioner to support her assertions and this is not sufficient to allow me to conclude that MH's father and mother refuse or are unable to care for him.

CONCLUSIONS OF LAW

The agency properly denied KC benefits to the Petitioner for MH.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

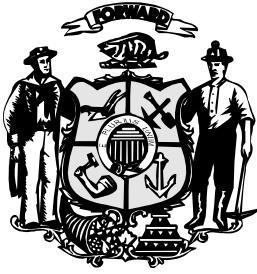
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of February, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 22, 2013.

Perez-Pena Limited
DCF - Kinship Care
DCF - Kinship Care